In the Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-744

MIDLAND INDEPENDENT SCHOOL DISTRICT, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet App. A-32 to A-38) is reported at 519 F.2d 60. The opinion of the district court (Pet. App. A-9 to A-21) is reported at 334 F. Supp. 147.

JURISDICTION

The judgment of the court of appeals (Pet. App. A-38) was entered on August 28, 1975. A petition for rehearing was denied on November 3, 1975. The petition for a writ of certiorari was filed on November 20, 1975. The jurisidiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the court of appeals properly ruled that the evidence demonstrated that De Zavala elementary school was unconstitutionally segregated.

2. Whether the court of appeals properly instructed the district court to take the steps necessary to eliminate the vestiges of the dual school system in the elementary grades.

STATEMENT

The United States instituted this school desegregation suit on August 7, 1970, in the United States District Court for the Western District of Texas alleging that the Midland Independent School District unconstitutionally segregated black and Mexican-American students in the elementary grades. The district court ruled that the school district was a unitary system, and it denied injunctive relief (Pet. App. A-1 to A-7). In June 1971, the court of appeals vacated the judgment of the district court as it related to pupil assignment in the elementary schools, and remanded the case with instructions that the district court require the school board to implement a pupil assignment plan consistent with this Court's ruling in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (Pet. App. A-8).

On remand the district court reiterated its prior opinion that the Midland elementary grade student assignment system met constitutional standards (*id.* at A-16), but it ordered implementation of a school board proposal (which had been agreed to by the school board and the United States) for the desegregation of nearly all-black Washington Elementary (*id.* at A-19). The court also ruled that De Zavala Elementary, a nearly all-Mexican-American school, was not unconstitutionally segregated;

it therefore denied relief as to that school (*id.* at A-17 to A-19).

The court of appeals reversed. It held that both Washington and De Zavala Elementary schools had virtually all-minority enrollments as the result of deliberate segregatory acts on the part of the school board (*id.* at A-34 to A-38), and it ordered the district court to "immediately take the necessary steps to completely dismantle the dual system in the elementary grades, in the light of recent decisions of this Court" (*id.* at A-38).

ARGUMENT

The decision of the court of appeals is correct, and further review is not warranted.

1. Petitioners contend that the court of appeals erred in ruling that the Midland Independent School District deliberately segregated Mexican-American students. The district court found that "the predominance of Mexican-American children in the De Zavala School was not caused by public or private discrimination or state action but by economic factors and the decision of the Mexican-Americans to live in their own neighborhood rather than in predominantly White neighborhoods and that the school board has acted consistently in good faith in this matter" (Pet. App. A-18).

These conclusory findings were contrary to the uncontroverted evidence, which, as the court of appeals correctly ruled, established that the segregation of Mexican-American students at De Zavala was the direct result of deliberate segregatory action by the school board. In 1914 the school board established a terminal elementary school for Mexican-American children (originally called the Mexican school, later the Latin-American school, and most recently De Zavala) (*id.* at A-34 to A-35).

Until the mid-1940's, Mexican-American students were not allowed to attend Midland high schools (*id.* at A-35). Mexican-American students were bused to the Mexican school, and Anglo students living near the school attended schools elsewhere (*ibid.*). When De Zavala was zoned in 1946, the neighborhood zone "exactly circumscribed" the area of Midland in which Mexican-Americans lived, and subsequent zone changes were made as the boundaries of "El Barrio" expanded (*ibid.*).

In addition, until 1968 the school board maintained a student transfer policy that allowed a student to attend the schools " 'in which his racial group predominate(d)' " (*id.* at A-35 to A-36). The results at De Zavala were predictable. In 1970-1971, 368 Mexican-Americans, 43 blacks, and 8 whites attended De Zavala (*id.* at A-34). In 1974-1975, 308 Mexican-Americans, 31 blacks, and 5 whites were in attendance (*ibid.*).

Segregation of Mexican-American students was never mandated by law in Texas.[1] Therefore, the applicable standard for determining whether De Zavala is unconstitutionally segregated is whether the segregation is the result of intentionally segregative actions by school officials. *Keyes* v. *School District No. 1, Denver,* 413 U.S. 189, 198. On this record, as outlined above, the court of appeals correctly concluded that "[t]he totality of facts in this case along with the historical recognition of De Zavala as the Mexican-American School * * * demonstrated the segregatory intent of the MISD" (Pet. App. A-36).

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[1]The Texas Constitution required segregation of black students. Texas Constitution, Art. VII, Sec. VII.

2. Petitioners argue that the opinion of the court below requires them to engage in the "costly and impossible job of combating resegregation not brought about by any direction of the District" (Pet. 11). We do not read the court's decision as requiring such steps. The court ruled that the virtually all-minority enrollments at De Zavala and Washington elementary schools were the result of intentional segregation (Pet. App. A-34, A-38), and it remanded the case with instructions to "immediately * * * dismantle the dual system in the elementary grades" (*id.* at A-38). Nothing in the court's opinion or judgment requires the school board to correct racial imbalance where that imbalance is not the result of intentional segregation.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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